IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28-3-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.5636 of 2006
W.P.M.P.No.6084 of 2006

T. Jagadeesan ... Petitioner

Vs.

1. The Director General,
Central Industrial Security Force,
Block No., CGO's Complex,
Lodhi Road, New Delhi - 3.

2. The Inspector General,
C.I.S.F. Airport Sector,
Block No.13, CGO's Complex,
Lodhi Road, New Delhi - 3.

3. The Deputy Inspector General,
C.I.S.F. South Zone,
D Block, Rajaji Bhavan,
Besant Nagar, Chennai - 90.

4. The Assistant Commandant,
C.I.S.F. Unit, A.P.S.U. Trichy,
Trichy Airport,
Trichy - 620 007. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, for issuance of a writ of certiorari calling for the records pertaining to the transfer of petitioner by the 4th respondent in his office memorandum No.E.38014(1)/1/2006/Adm/302 dated 21.2.2006 and quash the same.

For Petitioner : Mr.C.K.M.Appaji

For Respondents : Mr.S.Manikumar, SCGSC

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O R D E R

In this writ petition, petitioner challenges the transfer order issued by the 4th respondent in his office memorandum No.E.38014(1)/1/ 2006/Adm/302, dated 21.2.2006.

2. Petitioner is working as Head Constable in Central Industrial Security Force Unit, Trichy Airport. By the impugned order, he has been transferred to Imphal, Manipur, on the ground of reduction of strength. The ground of attack raised in the affidavit is that the petitioner has got two sons and his first son is studying B.E. Degree course in a private Engineering College, Thackalay, Kanyakumari District and his second son is studying in 11th standard in a school at Nagercoil, Kanyakumari District. According to the petitioner, the first respondent issued circular on 30.10.2005, wherein it is stated that the persons having children studying in 9th and 11th standard during the current academic year 2005-006, are earmarked as affected persons and in para 4 of the circular it is further stated that such personnels need not be transferred on inter zonal basis, except on extreme administrative grounds. As petitioner's second son is studying in 11th Standard, he is entitled to be retained in south zone of CISF Unit itself. In the impugned order dated 21.2.2006, petitioner along with 28 others were transferred due to reduction of strength at ASGs and all the persons were directed to be relieved on 28.2.2006.

3. The learned counsel appearing for the petitioner, relying upon the circular dated 30.10.2005 issued by the first respondent submitted that the transfer order is in violation of circular, which will affect the study of the second son of the petitioner and hence the order of transfer of petitioner from Trichy to Imphal, Manipur, is totally unsustainable and therefore the same has to be quashed.

4. Mr.S.Manikumar, learned Senior Central Government Standing Counsel, took notice for the respondents and on instructions argued the matter. The learned counsel submitted that since there is reduction in strength, petitioner could not be retained in Trichy region and therefore petitioner along with 28 others were transferred to various places and therefore the impugned order is sustainable. The learned counsel further submitted that as the transfer order is already implemented, it is for the petitioner to comply with the directions in the transfer order and report at the transferred place. Learned counsel also cited an order of this Court made in W.P.No.39333 of 2005 dated 24.1.2006, wherein a similar transfer order was challenged on the very same ground that the petitioner's daughter was studying in 9th

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standard. This Court following the Supreme Court decision held that there is no legal infirmity either in the circular or in the guidelines made in this regard and dismissed the writ petition. The learned counsel also placed reliance on the decisions reported in (i) 2000 (6) SLR 715 (Havaldar Charan Singh v. Union of India), (ii) 2005 AIR SCW 4079 (J.K.Bansal v. Union of India), and (iii) 2005 SCC (L&S) 55 = AIR 2004 SC 2165 (State of U.P. v. Gobardhan Lal).

5. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Senior Central Government Standing Counsel.

6. (i) In the decision reported in 2000 (6) SLR 715 (Havaldar Charan Singh v. Union of India), it is held that the transfer of a member of the disciplined force on administrative grounds cannot be interfered with by the Court.

(ii) In the decision reported in 2005 AIR SCW 4079 (J.K.Bansal v. Union of India), the Honourable Supreme Court considered the question of transfer and in paragraph 12 held as follows,

> "12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in Public Sector Undertakings. The scope of interference by courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made."

(iii) In another decision reported in 2005 SCC (L&S) 55 = AIR 2004 SC 2165 (State of U.P. v. Gobardhan Lal), the Supreme Court set aside the order of the High Court, which interfered with the order of transfer and in paragraphs 7 and 8 held as follows,

> "7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the

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absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

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7. The circular relied on by the learned counsel for the petitioner will not help the petitioner as it permits the department to effect transfer in extreme administrative grounds, i.e., reduction of strength, as rightly contended by the learned Senior Central Government Standing Counsel.

8. Considering the above decisions and the order of transfer issued under the facts and circumstances of the case, I see no ground to interfere in the impugned order of transfer.

9. Consequently, the writ petition is dismissed. No costs. Connected WPMP is also dismissed.

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director General, Central Industrial Security Force, Block No.13, CGO's Complex, Lodhi Road, New Delhi - 3.

2. The Inspector General, C.I.S.F. Airport Sector, Block No.13, CGO's Complex, Lodhi Road, New Delhi - 3.

3. The Deputy Inspector General, C.I.S.F. South Zone, D Block, Rajaji Bhavan, Besant Nagar, Chennai - 90.

4. The Assistant Commandant, C.I.S.F. Unit, A.P.S.U. Trichy, Trichy Airport, Trichy - 620 007.

+ 1 cc to Mr.S. Manikumar, SCGSC SR No.15315

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Order in
WP.No.5636 of 2006.

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